HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

A.O. No. 1247 of 2001
(old No. 1188 of 1994)

1. Smt. Lila Devi, Mother,
2. Raj Kumar Singh, Brother,
3. Km. Sunita Sister,
   of Late Chandra Mohan Singh Negi,
   all residents of Bhawanigunj,
   Rampur Road, Haldwani,
   District – Nainital. …….. Appellants.

Vs.

Uttar Pradesh Road Transport Corporation,
Through Regional Manager, Nainital. …… Respondents

Sri Amit Bhatt, learned counsel for the appellants.
Sri A.N. Sharma, learned Counsel for the respondents.

Hon'ble P. C. Verma, A. C. J.
Hon'ble M. M. Ghildiyal, J.

(Delivered by Hon. M.M. Ghildiyal, J.)

This is an appeal against the judgment and award dated 03.08.1994 passed by the Motor Accident Claims Tribunal/ Special Judge Nainital, whereby he has dismissed the claim petition of the appellant.

Briefly stated the facts giving rise to the present appeal are that the appellants filed a petition u/s 166A of the Motor Vehicle Act for grant of compensation on account of death of Sri Chandra Mohan Singh Negi @ Mohan Singh Negi son of appellant no.1 and brother of the rest of the appellants, in a motor vehicle accident.

The claim petition was filed by the appellant stating therein the on 06.01.1990, the deceased, a student of Class-IX was going to Mahatama Gandhi Inter College, Haldwani on a cycle alongwith Sri Pankaj Kumar and when it reached near Private Taxi Stand at Bareilly Road, Haldwani, the bus no. UTF 2496 of the U.P. State Road Transport Corporation which was

being driven rashly and negligently by its driver dashed against the cycle resulting into grievous injuries to the deceased and simple injuries to Pankaj Kumar. They were rescued to Civil Hospital, Haldwani and the deceased was carried therefrom and admitted to All India Institute of Medical Science, Delhi where he succumbed to the injuries on 09.01.1990. At the time of the accident, the deceased was working as salesmen as part time job at Nainital Wool Centre, Haldwani and was getting Rs. 300/- per month. Had he not expired in the accident, he would have earned Rs. 2,000/- per month. Besides the pecuniary loss, the claimants have suffered great mental agony and pain and are entitled to compensation on this score too.

The respondent has contested the petition and has filed its written statement. The respondent admitted the accident and the death of the deceased due to the accident. However, the respondent has denied the rash and negligent driving on the part of the driver of the bus.

On the pleadings of the parties the following issues were framed by the learned Tribunal:-

1. Whether the death of the deceased Sri Chandra Mohan Singh Negi @ Mohan Singh Negi son of Sri Hari Singh Negi was caused by the accident which occurred on 6.11.1990 by UPSRTC Bus no. UTF 2496 by its driver rashly and negligently, as alleged?
2. Whether the death of the deceased Sri Chadner Mohan Singh Negi @ Mohan Singh Negi was caused due to the sole negligence of the deceased, as alleged by the opposite party?
3. Whether the State of U.P. is a necessary party for the purposes of compensation?

4. To what relief and compensation, if any, are the claimants entitled?

The learned Tribunal has decided issue no.1 in negative and held that at the time of the accident the said bus was not being driven rash and negligently by its driver. Issue no.2 was decided in affirmative holding that the accident was occurred due to the rash ad negligent pulling of the cycle by the deceased and was caused due to the sole negligent on his part, accordingly the claimants were not found entitlement of any relief and compensation, therefore, the claim petition was dismissed.

We have heard the learned counsel for the parties and have perused the entire evidence on record.

Counsel for the appellants has contended that the learned Tribunal did not take into consideration to the independent and natural evidence of P.O. 2 Sanjai Adhikari, while passing the impugned award and the Claims Tribunal has dismissed the claim of the appellant on the sole testimony of the interested witness, namely D.W.1. driven of the bus.

We find substance on the contention made on behalf of the appellant because P.W.2 Sanjay Adhikari has seen the accident form his kiosk who has categorically stated in his evidence that on 6.1.1990 at about 9:15 a.m. he was getting in his kiosk; he saw that Sri Chandra Mohan and Sri Pankaj Kumar were going towards Bareilly form Haldwani in a cycle; the cycle was being pulled by Pankaj Kumar at his extreme left side on the road; the deceased was sitting in front in the cycle. At that moment Bus no. UTF 2496 came towards Bareilly, which was being driven rashly and negligently by its driver who swerved to its wrong side and dashed against the cycle causing injuries to both the children. This witness in his

evidence has further deposed that both the injured were taken to the nearby hospital in a tempo where they were admitted. This witness has also deposed that he told to the police about the accident. In his cross-examination, this witness has further deposed that at the time of accident there was no much traffic at the site of the accident. This witness has categorically denied the suggestion by which it was suggested that the cause of accident was solely on the part of the cyclist who was pulling the cycle on the wrong side of the road.

The claimants have also filed the second copy of the F.I.R. lodged with regard to this accident in the concerned police station, though the opposite party did not accept the same. Second copy of the F.I.R., which has been file on behalf of the petitioners, is self sufficient to presume that an F.I.R. was lodged in the police station about the accident.

In spite of the testimony of the independent witness and documentary evidence, the learned Tribunal has wrongly dismissed the claim petition on the sole testimony of interest witness i.e. the driver of the bus. Therefore, the findings made by the learned Tribunal by which he hold that the accident was occurred due to sole negligence of the deceased is not sustainable. Contrary to it the death of the deceased Sri Chandra Mohan singh Negi @ Mohan Singh Negi S/o Sri Hari Singh Negi was caused in the accident, which occurred on 06.01.1990 by UPSRTC bus no. UTF 2496 on account of rash and negligent driving on the part of its driver. Accordingly issue no. 1 is decided in affirmative and consequently, issue no. 2 is decided in negative.

The claimants, in their claim petition, have stated that at the time of his death the deceased was aged about 15 years and was studying in class-IX. The deceased was engaged part time worker as a salesman in Suman Kumar's wool shop and was

earning Rs. 300/- per month. Besides it he was succeeded in the test conducted by Sports College, Lucknow in which he would have made his career as sportsman. The deceased was hail and hearty. Had the deceased would have alive, his earning would have been at least Rs. 2,000/- per month. The appellants have also submitted that they have spent Rs. 15,000/- for the treatment of the deceased, besides it they have spent Rs. 8,000/- on the last rites of the deceased. In the absence of documentary evidence the monthly income of the deceased and the expenses towards his treatment is not proved. Therefore, keeping in view the teen age of the deceased had the deceased would have been alive, he would have support marginally to the appellants. We presume that in case the deceased would have been alive his approximate income would have been at least Rs. 18,000/- per annum. After deducting one third of the amount i.e. Rs. 6,000/- for the own expenses of the deceased, if he would have been alive, the total annual pecuniary loss to the appellants come to Rs. 12,000/- per annum.

At the time of his death the deceased was 15 years old and as such a multiplier of 16, as per the second schedule of Section 163A (Schedule for compensation for third party fatal accident/injury cases claims), has to be applied for calculating the total dependency of the appellants on the deceased. Thus by multiplying the annual dependency of Rs. 12,000/-. (X) 16 the total pecuniary loss comes to Rs. 1,92,000/-. In our opinion the appellants are entitled for a consolidated sum of Rs. 25,000/- as compensation on account of loss of love and affection, mental agony and pain of the son and brother of the appellants respectively. As submitted by the appellants they have spent Rs. 8,000/- on the last rites of the deceased, therefore, we find them entitlement of Rs. 2,000/- on the score also. All these

counts would meet the ends of justice. Thus the appellants are entitled go get a sum of Rs. 2,19,000/- as compensation.

Consequently, the appeal is allowed. The award passed by the learned Tribunal on 03.08.1994 is hereby quashed. The appellants are awarded a sum of Rs. 2,19,000/- (Rs. Two Lacs Nineteen Thousands only) alongwith pendente lite and future interest @ 9% per annum.

(M. M. Ghildiyal, J.) **(P. C. Verma, A. C. J.)**

July 20, 2004:
NCM: